



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-1017]

RIN 1625-AA00

Safety Zone; Lower Mississippi River, Natchez, MS

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for certain waters of the Lower Mississippi River. This action is necessary to provide for the safety of life on these navigable waters near the bluffs, Natchez, MS, during a fireworks display on December 31, 2016. The safety zone will cover all navigable waters between mile markers 363.4 and 364.4 in the Lower Mississippi River located near the bluffs in Natchez, MS. This rulemaking will prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Memphis (COTP) or a designated representative.

**DATES:** This rule is effective from 9:40 p.m. on December 31, 2016 until 10:40 p.m. on January 1, 2017.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-1017 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rulemaking, call or email Petty Officer Todd Manow, Waterways Management, Sector Lower Mississippi River, U.S. Coast Guard; telephone 901-521-4813, email todd.m.manow@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
E.O.	Executive Order
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

On August 12, 2016, Natchez Specialties notified the Coast Guard that it will be conducting a fireworks display from 10 to 10:15 p.m. on December 31, 2016, to celebrate New Year's Eve. The fireworks are to be launched from a barge in the Lower Mississippi River at mile marker 363.9 approximately 200 yards northwest of the bluffs in Natchez, MS at approximate position 31°33.83'N, 091°24.50'W. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Memphis (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within an area on the Lower Mississippi River from mile marker 363.4 to mile marker 364.4.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative

Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because, although the event sponsor originally submitted notice to the Coast Guard on August 12, 2016, final details of the event, safety zone requirements, and regulatory patrol parameters were not finalized until November of 2016. It is impracticable to publish an NPRM because we must establish this safety zone by December 31, 2016.

Under [5 U.S.C. 553\(d\)\(3\)](#), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. For these same reasons, the Coast Guard finds good cause for implementing this rule less than thirty days before the effective date.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that potential hazards associated with this fireworks event would be a safety concern for anyone on the Lower Mississippi River from mile marker 363.4 to mile marker 364.4. Hazards from fireworks displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This rule is needed to ensure the safety of vessels and the navigable waters before, during, and after the scheduled event.

### **IV. Discussion of the Rule**

This rule establishes a safety zone from 9:40 p.m. to 10:40 p.m. on December

31, 2016. In the case of inclement weather on December 31, 2016, this safety zone will be enforced from 9:40 p.m. until 10:40 p.m. on January 1, 2017. The safety zone will cover all navigable waters of the Lower Mississippi River from mile marker 363.4 to mile marker 364.4 in the vicinity of the bluffs in Natchez, MS at approximate position 31°33.83'N, 091°24.50'W. The duration of the zone is intended to ensure the safety of waterway users on these navigable waters before, during, and after the scheduled fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text appears at the end of this document.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be restricted from entering this safety

zone which will impact a small designated area of the Lower Mississippi River for one hour during the evening of New Year's Eve. This safety zone may be ended early if conditions allow. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule will allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small

Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting one hour that would prohibit entry into a one mile stretch of the Lower Mississippi River, one half mile to either side of a fireworks barge. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.ID. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

**PART 165 REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1; 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T08-1017 to read as follows:

**§ 165.T08-1017 Safety Zone; Mississippi River, Natchez, MS.**

(a) **Location.** The following area is a safety zone: all waters of the Lower Mississippi River from mile marker 363.4 to mile marker 364.4 in the vicinity of the fireworks launch platform at approximate position 31°33.83'N, 091°24.50'W, 200 yards northwest of the Natchez bluffs.

(b) **Effective dates and enforcement times.** The safety zone will be in effect from 9:40 p.m. on December 31, 2016 until 10:40 p.m. on January 1, 2017. The safety zone will be enforced from 9:40 p.m. until 10:40 p.m. on December 31, 2016. In the case of inclement weather on December 31, 2016, this safety zone will be enforced from 9:40



p.m. until 10:40 p.m. on January 1, 2017.

(c) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless specifically authorized by the Captain of the Port Memphis (COTP) or a designated representative.

(2) Any vessel desiring to enter this safety zone must first obtain permission from the COPT or a designated representative, who may be contacted on VHF-FM Channel 16 or by telephone at 866-777-2784.

(d) Informational broadcasts. The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement periods for the safety zone.

Dated: December 20, 2016

T. J. WENDT  
Captain, U.S. Coast Guard  
Captain of the Port  
Memphis, Tennessee

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